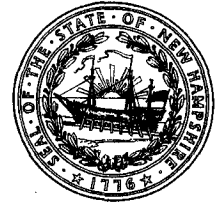




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Akwa Vista, LLC
Attn: Richard L. Mailloux
59 Sandy Pond Parkway
Bedford, New Hampshire 03110

Akwa Waterfront, LLC
Attn: Richard L. Mailloux
59 Sandy Pond Parkway
Bedford, New Hampshire 03110

Atom Contracting Corp.
59 Sandy Pond Parkway
Bedford, New Hampshire 03110

Re: Akwa Vista, Laconia, NH
Alteration of Terrain Permit #WPS-6715
Wetlands Permit #2003-01476

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
No. AF 05-065**

JULY 13, 2005

I. INTRODUCTION

This Notice of Proposed Administrative Fine is issued by the Department of Environmental Services, Water Division to Akwa Vista, LLC, Akwa Waterfront, LLC and Atom Contracting Corp., pursuant to RSA 482-A:13, RSA 485-A:22 and NH Admin. Rule Env-C 601. The Division is proposing that fines totaling \$18,250 be imposed against Akwa Vista, LLC, Akwa Waterfront, LLC and Atom Contracting Corp. for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. PARTIES

1. The Department of Environmental Services, Water Division ("the Division"), is an administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH.
2. Akwa Vista, LLC is a New Hampshire limited liability company having a mailing address of 59 Sandy Pond Parkway, Bedford, New Hampshire 03110.
3. Akwa Waterfront, LLC, LLC is a New Hampshire limited liability company having a mailing address of 59 Sandy Pond Parkway, Bedford, New Hampshire 03110.
4. Atom Contracting Corporation is a New Hampshire corporation having a mailing address of

59 Sandy Pond Parkway, Bedford, New Hampshire 03110.

5. Akwa Vista, LLC, Akwa Waterfront, LLC and Adam Contracting Corp. are hereinafter collectively referred to as "the Responsible Parties."

III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIMS

1. Pursuant to RSA 482-A, the Department of Environmental Services ("DES") regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES ("Commissioner") has adopted Wt 100 *et seq.* to implement this program.
2. Pursuant to RSA 482-A:13 and RSA 482-A:14, III, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of the statute, of rules adopted pursuant to the statute, or of any order or permit issued under the statute. Pursuant to RSA 482-A:11, I, the Commissioner has adopted Env-C 614 to establish the schedule of fines for such violations.
3. Pursuant to RSA 485-A:17, DES regulates significant alteration of terrain and erosion control through a permit program. Pursuant to RSA 485-A:6, VIII, DES has adopted NH Administrative Rules Env-Ws 415 to implement this program.
4. Pursuant to RSA 485-A:22, V, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of, *inter alia*, RSA 485-A:17, Env-Ws 415, or any permit issued pursuant hereto. Pursuant to RSA 485-A:22, V, the Commissioner has adopted Env-C 603 to establish the schedule of fines for such violations.
5. Pursuant to RSA 485-A:13 and related sections, DES regulates the discharge of pollutants to surface waters through a permit program. As part of this program, the Commissioner has adopted Env-Ws 401 – 405 relating to permits and has adopted Env-Ws 1700 to establish water quality standards for the State's waters.
6. Pursuant to RSA 485-A:22, V, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations relating to Env-Ws 1700. Pursuant to this section, the Commissioner has adopted Env-C 603 to establish the schedule of fines for such violations.
7. Akwa Vista, LLC is the owner of property located in Laconia, NH, more particularly identified on City of Laconia Tax Maps as Map and Street # 110-234 Lots 1 and 2, Map and Street # 116-306 Lots 3,4,7, and 9, Map and Street # 116-234 Lot 8, Map and Street # 126-252 Lot 9, and Map and Street # 141-252 Lot 5. Akwa Waterfront, LLC is the owner of property located on Scenic Road in Laconia, NH, more particularly identified on City of Laconia Tax Map as Map and Street # 131-234 Lot 3. Together the aforementioned lots comprise "the Property."
8. Atom Contracting Corp. ("Atom") is the contractor for the Akwa Vista/Akwa Waterfront project on the Property. Mr. Adam Mailloux is the Vice President of Atom.
9. On March 5, 2004, DES issued Alteration of Terrain/Site Specific Permit # WPS-6715 to Charan Industries, Inc. to construct a gated, single-family residential development, including a

clubhouse with associated parking, disturbing approximately 29 acres of land. Condition #4 provided that the approved plans and supporting documentation in the project file ("the Plans") are part of the Alteration of Terrain/Site Specific permit. The Plans detail the sequence of construction, and the measures to be taken for sediment and erosion control. Relevant provisions of the Plans include:

- a) Item #3 in the Construction Sequence (Sheet 45 of the Plans dated 2/11/04) requires construction of "temporary sediment and erosion control facilities" and "Sediment and erosion control measure shall be installed prior to any earth moving operations." "Swales and detention ponds shall be stabilized prior to directing run-off into them."
- b) Item #4 in the Construction Sequence (Sheet 45 of the Plans dated 2/11/04) requires construction of the "drainage and utility systems."
- c) Item # 8 in the Construction Sequence (Sheet 45 of the Plans dated 2/11/04) require that "all areas shall be stabilized by the end of the fall growing season. Areas not stabilized within the growing season must be stabilized by the use of erosion control matting."
- d) Item #9 in the Construction Sequence (Sheet 45 of the Plans dated 2/11/04) require construction of "temporary diversion channels, as required."
- e) Item #16 in the Construction Sequence (Sheet 45 of the Plans dated 2/11/04) requires that "all ditches, swales, basins and detention ponds must be stabilized prior to directing runoff into them."

10. On March 29, 2004, DES was notified that Akwa Vista, LLC had acquired the Property from Charan Industries, Inc.

11. March 29, 2004, DES personnel met with Adam Mailloux, Kurt Mailloux, Troy Mailloux, Richard Mailloux, Shanna Mailloux, of the Akwa Vista project, and Liz Stone of the Laconia Conservation Commission for a pre-construction meeting at the DES offices, 29 Hazen Drive, Concord, NH. All parties present signed the "Pre-Construction Meeting Memo" sheet. Relevant points that were discussed at the meeting were:

- a) Akwa Vista was to submit name changes for the wetlands and site specific permits;
- b) The wetlands permit would be registered with the County Registry of Deeds;
- c) Conditions 11-16 of the Wetland Permit were read and clarified; and
- d) The conditions and requirements of the site specific permit were discussed.

12. On March 30, 2004, DES issued Wetlands Permit # 2003-1476 ("the Wetlands Permit") to Akwa Vista, LLC to "dredge and fill 16,513 square feet of forested wetland for the construction of an access road and common driveway for 171 family residential lots in the cluster subdivision." The Wetlands Permit contains specific conditions and the measures to be taken to protect surface waters and jurisdictional wetlands. Relevant conditions of the Wetlands Permit included:

- a) Condition #6 of the Wetlands Permit requires that the Permit be "recorded with the Registry of Deeds Office by the Permittee. A copy of the registered permit shall be submitted to the NHDES Wetlands Bureau prior to construction."
- b) Condition #11 of the Wetlands Permit requires that "appropriate erosion and siltation controls be installed prior to construction, and remain until the area is stabilized."
- c) Condition #16 of the Wetlands Permit requires that "work...be conducted in a manner so as to minimize turbidity and sedimentation to surface waters and wetlands."
- d) Condition #20 of the Wetlands Permit states that "the contractor responsible for completion of the work utilize techniques described in the DES Best Management Practices for Urban Stormwater Runoff Manual (January, 1996) and the Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire (August, 1992)" (hereinafter collectively referred to as "Best Management Practices").

13. On December 1, 2004, DES personnel met with Mr. Adam Mailloux on the Property in response to a complaint from the Laconia Conservation Commission. Mr. Mailloux, was supervising on-going construction operations on the Property and was present during DES' inspection of the Property. During the inspection the following conditions were observed:

- a) Temporary erosion control measures were either inadequate or had not been installed in some areas of the Property; stone check dams required in the approved plan had not been constructed;
- b) Areas of unstabilized soils exceeded the 7.28 acres permitted;
- c) Large areas of unstabilized soils on the Property were eroding. Rutting was evident, as well as sloughing of some slopes;
- d) Sediment-laden runoff was being directed to unstabilized swales in some areas of the project. The runoff was eroding unstable soils and creating deep rutting in the swales;
- e) A building structure was near completion on one of the lots, and another lot had been cleared and stumped;
- f) Detention pond PC3q, adjacent to Scenic Road, had not been constructed;
- g) Detention ponds PC3o, PC1c, and PC3b were not stabilized with vegetation; and
- h) Sediment laden runoff was discharging from the Property into Lake Winnepesaukee via a drainage path consisting of a roadside swale on Scenic Road and an intermittent stream.

14. Photographs were taken to document the December 1, 2004 field inspection. Also, water samples were collected in Lake Winnepesaukee in the vicinity where sediment-laden runoff from the Property entered the Lake.

15. A turbidity plume was observed extending into Lake Winnepesaukee on December 1, 2004. At the time, surface water currents were flowing from the southeast towards the northwest. Water samples were taken at several locations and analyzed for turbidity. Turbidity results were 9.2 Nephelometric Turbidity Units (NTUs) 85 feet northwest of a point where runoff from the Property entered Lake Winnepesaukee, 75 NTUs approximately 200 feet further northwest in the Lake, and 27 NTUs approximately 500 feet northwest in the Lake. The background turbidity level taken approximately 150 feet southeast of the discharge point measured less than 1 NTU.

16. On December 16, 2004, DES issued Administrative Order WD 04-29 ("the 2004 Order") to Akwa Vista, LLC, Akwa Waterfront, LLC, and Atom Contracting Corp ("the Responsible Parties"). The 2004 Order required the Responsible Parties to:

- a) Cease and desist construction activities on the Property;
- b) Stabilize the Property to protect surface water quality and prevent erosion;
- c) Implement the approved erosion and sediment control plan;
- d) Install erosion control matting on all unstabilized/unvegetated (or sparsely vegetated) slopes;
- e) Place non-erodible granular backfill on all unpaved road or travel surfaces; and,
- f) Retain a Professional Engineer or a Certified Professional in Erosion and Sediment Control ("the monitor") to monitor construction on the Property.

17. On January 14, 2005, DES personnel conducted another inspection of the Property to determine compliance with the 2004 Order. During the inspection the following was observed:

- a) Runoff leaving the Property at the outlet structure of detention pond PC3q was clear;
- b) The runoff from the drainage swale at the western edge of the Property on Scenic Drive was clear;
- c) Runoff from the Property and entering Lake Winnepesaukee was clear;
- d) Erosion and sediment control measures were appropriately installed and appeared to be working as designed; and,
- e) A turbidity curtain was in place at the intermittent stream outfall to Lake Winnepesaukee.

18. On January 14, 2005, DES issued a Notice of Compliance and Recordation for Administrative Order No. WD 04-29 to the Responsible Parties.

19. On March 22, 2005, DES personnel conducted a follow-up visit to the Property. At the time of the visit the swales on Scenic Road and the intermittent stream discharging into Lake Winnepesaukee were covered with surficial ice although there was a slight amount of discharge

into Lake Winnepesaukee. The discharge appeared to be free of sediment.

20. On March 29, 2005, DES personnel conducted another inspection of the Property, and noted the following conditions:

- a) Detention pond PC3q remained unstable and the soil was saturated;
- b) Erosion and sediment controls had not been maintained;
- c) There was a small amount of runoff leaving the Property and entering Lake Winnepesaukee; and
- d) The discharge into the Lake was slightly turbid.

No samples were taken. Adam Mailloux was on the Property at the time of the site visit. DES personnel recommended that erosion and sediment controls on the Property be immediately "reinforced" and properly maintained.

21. On March 30, 2005, the Laconia Conservation Commission notified DES that there was an on-going discharge of turbid runoff into Lake Winnepesaukee ("the Lake"). DES personnel revisited the Property and water samples were collected to be analyzed for turbidity. The analytical results indicated a measurement of 37 NTUs outside of a turbidity curtain installed in Lake Winnepesaukee at a location where the intermittent stream flows into the Lake. The background turbidity level taken in the Lake approximately 200 feet northwest of the discharge point was less than 1 NTU.

22. On March 31, 2005, DES personnel again visited the Property and collected water samples to be analyzed for turbidity. The results of the tests were as follows: 50 NTUs at an area in the Lake 10 feet from the point where discharge from the Property entered the Lake; 55 NTUs within the intermittent stream at a point approximately 10 feet upgradient from where the stream enters the Lake; and, less than 1 NTU in a sample collected as a background sample at a point along the shoreline of the Lake approximately 200 feet northeast of where the stream enters the Lake.

23. On April 1, 2005, DES personnel met with representatives from Akwa Vista, LLC and Atom Contracting Corp. Turbid water was exiting detention pond PC3q and flowing into Lake Winnepesaukee. Equipment was actively working on the unstabilized road surface and sediment-laden water was flowing down the slope. Sufficient erosion controls were not in place. DES personnel discussed mechanisms for immediately stabilizing the saturated soil in preparation for anticipated weekend rains. Water samples were taken to be analyzed for turbidity. The results were as follows: 180 NTUs at the outlet of detention pond PC3q, 120 NTUs in Lake Winnepesaukee, outside the turbidity curtain. The background turbidity level taken approximately 100 feet southeast of the discharge point into the Lake measured 3.9 NTUs.

24. On April 2, 2005, DES personnel returned to the Property and collected water samples to be analyzed for turbidity. The results were as follows: 56 NTUs in Lake Winnepesaukee in the vicinity of where the intermittent stream enters the Lake. The background turbidity level in the Lake was less than 1 NTU.

25. On April 3, 2005, DES personnel revisited the Property and collected water samples to be analyzed for turbidity. The results were as follows: 75 NTUs at the outlet of detention pond PC3q, 6.2 NTUs in the swale on Scenic Road upstream of the detention pond PC3q outlet, 75 NTUs in Lake Winnepesaukee outside the turbidity curtain. The background sample, collected at a point southeast of the intermittent stream discharge point measured 7.6 NTUs.

26. On April 8, 2005, DES issued Administrative Order No. WD 05-10 ("the 2005 Order") to Akwa Vista, LLC, Akwa Waterfront, LLC, and Atom Contracting Corp ("the Responsible Parties"). The 2005 Order required the Responsible Parties to:

- a) Cease and desist construction activities on the Property;
- b) Stabilize the Property to protect surface water quality and prevent erosion;
- c) Implement the approved erosion and sediment control plan;
- d) Loam, seed, and install erosion control matting on all unstabilized/unvegetated (or sparsely vegetated) slopes;
- e) As necessary place stone check dams and silt fence perpendicularly across all unstabilized road surfaces;
- f) Place non-erodible granular backfill on all unpaved road or travel surfaces;
- g) Stabilize any disturbances to road surfaces at the end of each workday with the placement of additional non-erodible granular backfill;
- h) Submit photographic evidence to DES within 15 days of the date of the 2005 Order, documenting completion of the above items;
- i) Continue monitoring of the Property by a Professional Engineer or a Certified Professional in Erosion and Sediment Control ("the monitor"). Require the monitor to submit photographic evidence that demonstrates that all unstabilized areas of the Property have been stabilized with 85% vegetative cover; and,
- j) Submit a restoration plan to the DES Wetlands Bureau for removal of accumulated sediment in Lake Winnepesaukee.

27. Surface water runoff from the Property entered into Lake Winnepesaukee, a surface water of the state.

28. Pursuant to RSA 485-A:8, II, Lake Winnepesaukee is classified as a Class B water.

29. Pursuant to Env-Ws 1703.11(b), turbidity in Class B waters shall not exceed naturally occurring conditions (background levels) by more than 10 NTUs.

30. RSA 485-A:13 states that it shall be unlawful for any person or persons to discharge or

dispose of any sewage or waste to the surface or groundwater of the state without first obtaining a permit from DES. Sediment-laden water constitutes waste as defined under RSA 485-A.

IV. VIOLATIONS ALLEGED AND PROPOSED ADMINISTRATIVE FINES

1. The Responsible Parties have violated RSA 485-A:17 and Env Ws 415.09(i) by failing to install adequate erosion control measures on the Property. For this violation Env-C 603.02(b)(2) specifies a fine of \$1,250.
2. The Responsible Parties have violated RSA 485-A:17 and Condition #4 of the Alteration of Terrain/Site Specific Permit by failing to follow the approved construction sequence. For this violation Env-C 603.02 (b)(2) specifies a fine of \$1,250.
3. The Responsible Parties have violated RSA 485-A:17 and Condition #4 of the Alteration of Terrain/Site Specific Permit by failing to stabilize areas within the Property. For this violation Env-C 603.02(b)(2) specifies a fine of \$1,250.
4. The Responsible Parties have violated RSA 485-A:8 and Env-Ws 1700 on at least 6 occasions by discharging waste into surface waters of the state resulting in turbidity violations without obtaining a permit from DES. For this violation Env-C 603.08(c) specifies a fine of \$2,000 per violation. For the 6 violations cited the Division is seeking a fine of \$12,000.
5. The Responsible Parties have violated RSA 482-A:3, I by placing fill in surface waters of the State without a permit from DES (Condition #16 of the Wetlands Permit). For this violation Env-C 614.05(b)(4) specifies a fine of \$2,000.
6. The Responsible Parties have violated RSA 482-A and Env-Wt 304.09(d) by failing to submit a copy of the registered Wetlands permit to NHDES Wetlands Bureau prior to construction (Condition #6 of the Wetlands Permit). For this violation Env-C 614.07(c) specifies a fine of \$500.

The total fine being sought is \$18,250.

V. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING

Pursuant to Env-C 601.06, the Responsible Parties are required to respond to this notice. Please respond no later than August 23, 2005 using the enclosed colored forms.

1. If the Responsible Parties would like to have a hearing, please have authorized representatives sign the appearance section of the colored forms (upper portion), check the appropriate lines requesting a **formal hearing** and return them to the DES Legal Unit, at the address noted on the form.
2. If the Responsible Parties wish to discuss the possibility of settling the case, please have authorized representatives sign the appearance forms, check the appropriate line indicating a desire to **meet informally** and return them to the DES Legal Unit.

3. If the **Responsible Parties** choose to waive the hearing and pay the proposed fines, please have authorized representatives sign the waivers (lower portion) and return them **with payment of the fine** to the DES Legal Unit.

The Responsible Parties are not required to be represented by an attorney. If the **Responsible Parties** choose to be represented by an attorney, the attorney must file an appearance and comply with NH Admin. Rule Env-C 200.

VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that **the Responsible Parties** committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that **the Responsible Parties** committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fines sought will be imposed, subject to the following:

* Pursuant to Env-C 601.09(c), the fines will be **reduced by 10%** for each of the circumstances listed below **that the Responsible Parties prove, by a preponderance of the evidence**, applies in this case:

1. The violation was a one-time or non-continuing violation, **and the Responsible Parties** did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and the Responsible Parties** did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violation was committed, **the Responsible Parties** were making a good faith effort to comply with the requirement that was violated.
3. **The Responsible Parties** have no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to **the Responsible Parties'** case which was not known to the Division at the time the fine was proposed.

*******IMPORTANT NOTICE*******

An administrative fine hearing is a formal hearing. All hearings will be recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that **the Responsible Parties** committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is the Responsible Parties' opportunity to present testimony and evidence that the Responsible Parties did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If the Responsible Parties have any evidence, such as photographs, business records or other documents, which show that the Responsible Parties did not commit the violation(s) or that otherwise support **the Responsible Parties'** position, **the Responsible Parties** should bring the evidence to the hearing. **The Responsible Parties** may also bring witnesses (other people) to the hearing to testify on **the Responsible Parties'** behalf.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.des.nh.gov). If **the Responsible Parties** have any questions about this matter, please contact the DES Legal Unit, at (603) 271-7509.


Harry T. Stewart, P.E., Director
DES Water Division

Enclosure (NHDES Fact Sheet #CO-2002)

ec: Michael J. Walls, DES Assistant Commissioner
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Public Information Officer, DES PIP Office
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
Rene Pelletier, Administrator, DES Land Resources Management Program
Collis Adams, Administrator, DES Wetlands Bureau
Ridgely Mauck, Supervisor, Alteration of Terrain Program
Tracey Boisvert, Senior Enforcement Officer, DES Wetlands Bureau
Jocelyn Degler, Wetlands Permitting Officer, DES Wetlands Bureau
cc: Charles F. Cleary Esq., 95 Market Street, Manchester, NH 03101 (*registered agent/Atom only*)
Laconia Planning Board
Laconia Conservation Commission

***** RETURN THIS PAGE ONLY *****

**AKWA VISTA, LLC IS REQUIRED BY LAW
TO RESPOND TO THIS NOTICE.**

PLEASE RESPOND NO LATER THAN August 23, 2005

Please check the appropriate line and fill in the requested information below.

APPEARANCE On behalf of Akwa Vista, LLC:

_____ I request to have a **formal hearing** scheduled in this matter.

_____ I would like to **meet informally** to discuss the issues in this matter.

WAIVER OF HEARING On behalf of Akwa Vista, LLC:

_____ I certify that I understand the right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive those rights. The fine payment in the amount of \$18,250 paid to "Treasurer, State of New Hampshire" is enclosed.*

** If payment is made by a check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

Pursuant to Env-C 203.05 please provide the following information:

Signature

Date

Name (please print or type): _____

Title: _____

Phone: _____

RETURN THIS PAGE ONLY AND ANY PAYMENT TO:

DES Legal Unit

Attn: Michael Sclafani, Legal Assistant

P.O. Box 95

Concord, NH 03302-0095

***** RETURN THIS PAGE ONLY *****

**AKWA WATERFRONT, LLC IS REQUIRED BY LAW
TO RESPOND TO THIS NOTICE.**

PLEASE RESPOND NO LATER THAN August 23, 2005

Please check the appropriate line and fill in the requested information below.

APPEARANCE On behalf of Akwa Waterfront, LLC:

_____ I request to have a **formal hearing** scheduled in this matter.

_____ I would like to **meet informally** to discuss the issues in this matter.

WAIVER OF HEARING On behalf of Akwa Waterfront, LLC:

_____ I certify that I understand the right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive those rights. The fine payment in the amount of \$18,250 paid to "Treasurer, State of New Hampshire" is enclosed.*

** If payment is made by a check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

Pursuant to Env-C 203.05 please provide the following information:

Signature

Date

Name (please print or type): _____

Title: _____

Phone: _____

RETURN THIS PAGE ONLY AND ANY PAYMENT TO:

DES Legal Unit

Attn: Michael Sclafani, Legal Assistant

P.O. Box 95

Concord, NH 03302-0095

***** RETURN THIS PAGE ONLY *****

**ATOM CONTRACTING CORPORATION IS REQUIRED BY LAW
TO RESPOND TO THIS NOTICE.**

PLEASE RESPOND NO LATER THAN August 23, 2005

Please check the appropriate line and fill in the requested information below.

APPEARANCE On behalf of Atom Contracting Corp.:

_____ I request to have a **formal hearing** scheduled in this matter.

_____ I would like to **meet informally** to discuss the issues in this matter.

WAIVER OF HEARING On behalf of Atom Contracting Corp.:

_____ I certify that I understand the right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive those rights. The fine payment in the amount of \$18,250 paid to "Treasurer, State of New Hampshire" is enclosed.*

** If payment is made by a check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

Pursuant to Env-C 203.05 please provide the following information:

Signature

Date

Name (please print or type): _____

Title: _____

Phone: _____

RETURN THIS PAGE ONLY AND ANY PAYMENT TO:

DES Legal Unit

Attn: Michael Sclafani, Legal Assistant

P.O. Box 95

Concord, NH 03302-0095

ENVIRONMENTAL Fact Sheet



29 Hazen Drive, Concord, New Hampshire 03301 • (603) 271-3503 • www.des.nh.gov

CO-2

2002

Administrative Fines of the Department of Environmental Services

The Commissioner of the Department of Environmental Services (DES) is authorized by several statutes to impose administrative fines for certain violations of those statutes. In order to implement this authority, the Commissioner has adopted rules which specify the procedures for notifying people that a fine is being proposed and which specify the fine amount for any given violation. These rules are identified as Chapter Env-C 600.

Administrative fine proceedings follow a defined path. The first step is for a Division of DES to issue a Notice of Proposed Fine. The Notice will inform you of the violations the Division believes you have committed, together with the dollar amount of the fine that is being proposed. At this point, a final decision as to whether to impose the fine **has not been made** ... the Notice simply initiates the proceeding. The Notice will also inform you that you have a right to have a hearing before a final decision will be made, and may give a date and time for the hearing.

The Notice you receive will have a page attached to it on which you can indicate whether you will attend a hearing or whether you are waiving your right to a hearing and paying the fine which has been proposed. **YOU MUST COMPLETE AND RETURN THIS FORM.** The worst thing you can do if you receive a Notice is to ignore it! Under the rules which have been adopted, the case can proceed even if you don't respond. In order to achieve the best result, you must participate in the process.

When you receive a Notice of Proposed Fine, if you are interested in trying to settle the case without going to a formal hearing you should contact the person identified in the Notice. Many fine cases are settled in this way, often with a lower fine, a payment schedule, and/or a suspended fine. The negotiations need to start soon after the Notice is received, though. Don't wait until the day scheduled for the hearing to ask about settling the case.

If the case proceeds to a hearing, the Commissioner will designate a person to serve as a hearing officer to preside at the formal hearing. The hearing officer will not have prior knowledge of the Division's allegations, and will be neutral insofar as the outcome of the case is concerned. At the hearing, the Division will be required to prove that the violation(s) occurred and that the proposed fine is warranted. You will have an opportunity to ask questions of (cross-examine) the Division staff, and also present your own evidence, including testimony of witnesses if you wish, to show why the fine should not be imposed.

(over)

After the hearing is over, the hearing officer will compile the record (i.e. all of the information that was received at the hearing) and will make a recommendation to the Commissioner as to whether or not the fine should be imposed. The Commissioner will make a decision based on the evidence and testimony, and the decision issued by the Commissioner will specifically state the reasons for the decision.

The rules adopted by the Commissioner require the proposed fine to be reduced in certain circumstances, which are listed at Env-C 601.09. These include that you have not previously violated a law or rule implemented by DES, or that you acted in good faith. The Commissioner also has the discretion to allow you to pay a fine on a payment schedule, and/or to suspend all or a portion of the fine conditional upon remedying the underlying violation or staying in compliance with DES requirements for a specified period of time.

Sometimes people are concerned that the findings and rulings made by the Commissioner might be used against them in a separate proceeding (for instance, if their neighbor sues them for damages arising out of the same violation(s) for which they are being fined). In such a case, DES has accepted payment of the fine with a specific denial of liability. This is like pleading "no contest" to a traffic ticket: you pay the fine assessed, but are not admitting that you did anything wrong.

This fact sheet is intended as a basic source of information concerning DES administrative fines. It is not intended to replace the laws and rules regarding administrative fines, but merely to provide a summary of them.

For more information contact the DES Legal Unit, PO Box 95, Concord, NH 03302-0095, (603) 271-6072.